

**BOARD OF APPEALS CASE NO. 5136**

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**BEFORE THE**

**APPLICANTS: Mr. & Mrs. Joseph Young**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct a dwelling  
and permit existing garage within the front yard  
setback; 3209 Lucky Drive, Street**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

**Aegis: 4/4/01 & 4/11/01**

**HEARING DATE: May 21, 2001**

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**Record: 4/6/01 & 4/13/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Mr. and Mrs. Joseph D. Young, are requesting a variance pursuant to Section 267-34B, Table II, of the Harford County Code, to allow a single-family dwelling and an existing garage within the required 40 foot front yard setback (15 foot proposed for dwelling and approximately 10 foot for garage), in an AG/Agricultural District.

The subject parcel is located at 3209 Lucky Drive – Deer Park, and is more particularly identified on Tax Map 26, Grid 1-E, Parcel 100, Lot 9. The subject parcel consists of 1.62± acres, is presently zoned AG/Agricultural, and is entirely within the Fifth Election District.

Appearing before the Hearing Examiner was Mrs. Terry Young, one of the Co-Applicants herein. Mrs. Young indicated that she and her husband wish to purchase a modular home and have it placed on the subject property, but that it will encroach within the 40 foot front yard setback. She explained that the lot is only 80 feet wide, while other lots in the neighborhood are 100 feet wide. She said the property is very long, even though it is approximately 1.62 acres in size and has frontage on Boyd Road and Lucky Drive. Lucky Drive is a dirt and gravel private road located in the Deer Park subdivision. Her property is predominately wooded, except for the area around the existing improvements. In the neighborhood are steep areas with very few usable land areas. There is a stream on her property that cuts across south of her garage, which is the old cabin located on the property.

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In addition, there are areas of wetlands associated with the stream and to the northern end of the lot is a single-wide mobile home. This is the home that will be replaced by the proposed modular dwelling and foundation. The septic system is located near the mobile home and a well is located at the bottom of the hill near the garage. The witness did not feel as though any detrimental impact would result from replacement of the mobile home with a modular home. She and her husband intend to use this as their year-round residence. The witness further described the neighborhood as having nine homes along Lucky Drive.

This lot was created by the Planning Commission approval of the subdivision of Deer Park in February 1961. On March 21, 1961, a review of the subject lot took place and was identified by the Department of Planning and Zoning in its Staff Report prepared for this case and marked as Attachment 11. The minutes of that meeting on March 21, 1961, indicate that the Planning Commission reduced this lot width from 100 feet to 80 feet and a permit was approved and issued for a mobile home in August, 1978. Because the lot width had been reduced, it was necessary to make the northern property line the rear lot line and the eastern lot line the side yard in order to accommodate the 12 foot by 60 foot mobile home. In July, 1962, a permit was issued for a cabin which has since become the garage on this property and is located in approximately the middle of the lot just north of the stream.

Mr. Bruce Garner appeared next for the Applicant and indicated that he is the owner of Bayside Homes. Mr. Garner is in the business of supplying modular homes and Terry Young works for him. Mr. Garner believes that replacing the mobile home with the modular home will be a significant improvement to this property. Mr. Garner indicated that the modular home will be placed almost exactly where the existing mobile home is, will have a permanent foundation, and will result in a 15 foot setback from Lucky Drive. The house itself will be located 37 feet from the road, which is a gravel road.

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The Department of Planning and Zoning has examined this property and the Applicants' request. Mr. Anthony McClune appeared before the Hearing Examiner on behalf of the Department of Planning and Zoning and reiterated much of the testimony of Mrs. Young. Mr. McClune confirmed that the Planning Commission created this lot and reduced its width from 100 feet to 80 feet in 1961. Mr. McClune stated that the Department of Planning and Zoning had found the property topographically unique and because of the variance regarding the lot width granted in 1961, together with the environmental features of the property, the lot presents a very restrictive building envelope. In the opinion of Mr. McClune, there was no other place on this property where a modular home or any other type of structure could be located without the need for some type of variance. Mr. McClune pointed out that the existing garage which was, in fact, the old cabin, has existed at its current location for over 38 years without creating any adverse impacts on the roadway. In the opinion of Mr. McClune and the Department of Planning and Zoning, the requested variances, if granted, would not create any adverse impacts on neighboring properties, the neighborhood, Lucky Drive, or materially impact the intent or purpose of the Harford County Code.

In conclusion, Mr. McClune indicated that the Department of Planning and Zoning had recommended approval of the request, subject only to the Applicants obtaining the necessary permits and inspections for the modular home.

Mrs. Jean Larsen, a neighboring property owner to the subject property appeared and testified in opposition before the Hearing Examiner. Mrs. Larsen did agree that the removal of the mobile home and replacement with a modular home would, in fact, enhance the property, but expressed her concerns regarding the road. Mrs. Larsen indicated that there was no common drive agreement or maintenance agreement regarding the gravel road and was concerned that Applicants' property and possessions had encroached upon the roadway. The witness referred to some wood that was located along the road that she said had actually changed the course of the road over years. Mrs. Larsen concluded by saying that while the modular home would be an improvement, the Applicants really needed to remove debris, chopped wood, and other items from the roadway and from the easement areas along the road.

## **CONCLUSION:**

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The Applicants are requesting a variance, pursuant to Section 267-34B, Table II, of the Harford County Code, to allow a single-family dwelling and an existing garage within the required 40 foot front yard setback (15 feet proposed for the dwelling and approximately 10 feet for the garage) in an AG/Agricultural District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by Court, the variance process is a two-step, sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties, such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration of whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Cromwell v. Ward, 102 Md. App. 691 (1995).

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Based on the guidance provided by the Court in Cromwell, the Hearing Examiner finds not only that the subject property is topographically unique and unusual in nature, but that this uniqueness results in the requirement that the Applicant request a variance in order to locate a home on this property. There exists a mobile home and an old cabin; the cabin being presently used as a garage on this property and these structures have existed for many years. The replacement of the mobile home with a more permanent modular home will not result in any adverse impacts to neighboring properties or result in adverse traffic impacts along Lucky Drive. The narrowness of the lot has created the need for this variance and that narrowness was created by the Planning Commission back in 1961. The subdivision of Deer Park is unique and, understandably, Lucky Drive should have been subject to some type of common drive agreement many years ago.

While the Hearing Examiner sympathizes with the testimony presented by Mrs. Larsen regarding the lack of a common drive agreement and the lack of a common maintenance agreement regarding that drive, those subjects are not matters before, or considered by, the Hearing Examiner in the instant case.

Based on all the testimony and the recommendations of the Department of Planning and Zoning, the Hearing Examiner recommends approval of the requested variances, subject only to the Applicants' obtaining all necessary permits and inspections.

Date     JUNE 21, 2001

William F. Casey  
Zoning Hearing Examiner